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Appln. No.: 09/838,147
Reply to Office Action of March 25, 2008

REMARKS/ARGUMENTS

The non-final Office Action of March 25, 2008, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 23 and 27 have been canceled. Claims 21 and 25 have been amended. Claim 42 has been added. No new matter has been added. Claims 1-22, 24-26, and 28-42 are pending upon entry of the present paper.

Applicants note with appreciation the indication of the allowability of claims 1-20 and 29-41. Applicants have amended claims 1 and 35 so as to present the referenced claims in preferred form without modifying the nature of the claimed subject matter. As such, Applicants submit that the Office is not required to perform supplementary, substantive examination of the referenced claims in view of the amendments to said claims.

Applicants submit that claims 21, 22, 24-26, 28, and 42 are in condition for allowance, and respectfully request notification of the same.

Rejections Based on Rupp in view of Luna

Claims 21, 24, 25, and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent no. 6,144,464 to Rupp et al. ("Rupp"). This rejection is respectfully traversed.

Amended independent claim 21 recites, among other features, "wherein the controller is configured to receive the resource related information via a push command." This feature is similar to features previously recited in now-canceled claim 23.

The Office Action at page 4, in the context of rejecting claim 23, correctly indicated that Rupp fails to (explicitly) disclose features related to a push command as recited therein. The Office Action at page 4 relied on U.S. pub. no. 2002/0123335 to Luna et al. ("Luna") as allegedly disclosing the recited features. Furthermore, the Office Action at page 4 asserts that it would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the other applied references¹ to include push technology for the purpose of initiating provisioning for enhancement of a mobile device. Applicants respectfully disagree with such an

¹ The Office Action at page 4, in the context of rejecting claim 23, asserts the motivation to combine Luna with Lee (U.S. patent no. 6,490,291). Applicants presume for purposes of this paper that the Office would present the same rationale for forming a combination with Rupp as well, since Rupp was applied in formulating the § 103(a) rejection of claim 23; if this assumption is inaccurate, Applicants respectfully request clarification in the next communication.

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assertion, and respectfully submit that the Office has applied impermissible hindsight in combining Rupp and Luna for at least the reasons discussed below.

Rupp at col. 9, lines 11-67 and Figures 2-4 describes a method for modifying a data transfer rate of facsimile data over a wireless communication channel. More specifically, Rupp at the cited passages and Figures describes that once a data transfer rate of facsimile data between facsimile machine 198 and facsimile machine 210 has been determined (with facsimile machine 198 either serving in the position of transmitting facsimile machine or receiving facsimile machine), an initiate wireless transfer of facsimile data step 306 establishes a wireless session for transmission of facsimile data.

Luna is directed to a method and apparatus for provisioning a mobile station over a wireless network. See Luna at Title and Abstract. The Office Action at page 4 relies on Luna at paragraph [0017] (and paragraph [0025]) to allegedly disclose features related to a push command as recited in amended claim 21 (and previously as recited in claim 23). Luna at paragraph [0017] and Figure 1 describes a pull proxy 5 and a push proxy 8 as enabling communication between mobile stations 1 on a wireless network 2 and devices on a network 3. Luna at paragraph [0018] describes that pull proxy 5 is used to enable the user of a mobile station 1 to locate and request content from a content server 6. Luna at paragraph [0018] continues that *push proxy 8 is used during network-initiated provisioning, as opposed to user-initiated provisioning*, to “push” provisioning content from content servers 6 to mobile stations 1.

Even assuming (without admitting) that the facsimile machine 198 and the transmitting/receiving fax machine 210 disclosed in Rupp at Figure 2 may appropriately be analogized to the apparatus and the wireless terminal recited in claim 21, Applicants submit that one of ordinary skill in the art would not have had an apparent reason to modify Rupp to include the disclosures of Luna in the manner suggested by the Office Action (at page 4, with respect to the rejection of now-canceled claim 23) because Luna teaches away from an apparatus comprised of a wireless communication terminal and a controller, wherein the controller is configured to receive resource related information via a push command from a wireless terminal as required by claim 21. More specifically, as discussed above, Luna discloses that push proxy 8 is not used during user-initiated provisioning (e.g., between facsimile machine 198 and fax

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machine 210 of Rupp), but is instead used during network-initiated provisioning. Applicants refer the Office to MPEP § 2141.02 (VI. Prior Art Must Be Considered In Its Entirety, Including Disclosures That Teach Away From The Claims) (providing that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention) (emphasis in original).

For at least the foregoing reasons, claim 21 is allowable over the applied references.

Amended claim 25 recites, among other features, "wherein the controller is configured to send the resource related information via a push command." These features are similar to features previously recited in now-canceled claim 27. The Office Action at page 4 relied on the same disclosures of Luna as discussed above with respect to claim 21 (and now-canceled claim 23) in rejecting claim 27. For at least reasons substantially similar to those discussed above with respect to claim 21, claim 25 is allowable over the applied references.

Claims 24 and 28, which depend from claims 21 and 25, respectively, are allowable for at least the same reasons as their respective base claims.

Rejections Based on Rupp in view of Lee

Claims 22 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rupp, in view of U.S. patent no. 6,490,291 to Lee et al. ("Lee").² This rejection is traversed.

Notwithstanding whether Lee is properly combinable with Rupp (or for that matter, whether Lee is properly combinable with Luna), Lee fails to cure the deficiencies of Rupp (and Luna) described above with respect to independent claims 21 and 25. Claims 22 and 26 depend from claims 21 and 25, respectively, and are therefore allowable for at least the same reasons as their respective base claims.

² The Office Action at page 3 refers to claims 23 and 27 as rejected under 35 U.S.C. § 103(a) based on Rupp and Lee, but then proceeds to discuss a rejection of claims 22 and 26 based on Rupp and Lee. Furthermore, the Office Action at page 4 provides for a rejection of claims 23 and 27 based on Rupp and Luna. Applicants presume for purposes of this paper that the enumeration of claims at page 3 of the Office Action was intended to refer to claims 22 and 26, as opposed to claims 23 and 27; if this assumption is incorrect, Applicants respectfully request clarification in the next communication.

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New Claim

New claim 42 has been added to claim an aspect of the invention in *Beauregard* format, i.e., as computer storage media, and is believed allowable for at least similar reasons as the other allowed independent claims. No new matter has been added.

CONCLUSION

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly. All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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